

STATEWIDE PROGRAM STANDING COMMITTEE FOR ADULT MENTAL HEALTH

Meeting Notes August 8, 2005

MEMBERS PRESENT: Anne Donahue, Kitty Gallagher, George Karabakakis, David Mitchell, Gladys Mooney, Clare Munat, Marty Roberts, and Jim Walsh

PROSPECTIVE MEMBER: Sue Powers

MEMBERS OF THE PUBLIC: Chandler Hall, Michael Sabourin, Cynthia Welker, and Laura Ziegler

VDH/DMH STAFF: Wendy Beininger, Paul Blake, John Howland, Melinda Murtaugh, Frank Reed, Tom Simpatico, and Beth Tanzman

Marty Roberts facilitated today's meeting, which was shortened to one hour because of the meeting of Vermont's Block Grant Planning Council, beginning at 2:00. The only item on the Standing Committee agenda was the report on the Vermont State Hospital (VSH) from the Civil Rights Division of the Department of Justice (DOJ). Cynthia Welker and Chandler Hall briefly introduced themselves. They are potential candidates for the consumer vacancy on the VSH Governing Body.

Discussion of DOJ Findings

Chronology

July 7	The Division of Mental Health (DMH) received DOJ's findings in regard to the Civil Rights Division's investigation of conditions and practices at VSH
July 11	At the regular monthly meeting of the Standing Committee, members expressed their interest in having input into DMH's response to DOJ's findings
July 25	DMH responded to DOJ
August 5	DMH's response was posted on the Vermont Department of Health's Web site as part of the biweekly Mental Health Update

At the July 11 meeting, when the Standing Committee made known its interest in having a role in the Division of Mental Health's (DMH) response, Paul Blake told Standing Committee members that he was not sure how closely they and DMH could work together; he needed further consultation with Wendy Beininger, DMH's Chief Assistant Attorney General. Further consultation revealed issues of attorney-client privilege that could be compromised if the Standing Committee were to take a more direct role in negotiations with DOJ. Those negotiations are very much a legal process. The Douglas administration wanted an early response to DOJ's

findings partly as a way of reassuring DOJ that Vermont wants to cooperate with the federal government in establishing agreement on remedial measures, and that is why DMH's response went to DOJ on July 25 instead of August 23, which would have been the end of the forty-nine-day response period set by DOJ.

Paul assured Standing Committee members once again today that he is committed to improving communications with them. DMH very much wants to hear their input and will take it into DMH meetings with DOJ that should be starting in September. Paul does not see the letter of July 25 as the only opportunity for the Standing Committee to offer its own ideas.

Anne Donahue wanted to know why, since the Standing Committee had expressed interest in input into DMH's response, members were not informed earlier of DMH's response to DOJ. Anne saw DMH's failure to inform Standing Committee members as another breakdown in communication.

George Karabakakis said that there should be a process for addressing substantive issues. Clare Munat observed that DMH's letter is not a detailed response to DOJ's findings. What is the worst that can happen? she asked. The worst, Wendy Beininger replied, is that DOJ could take the state of Vermont to court. The findings can be the basis of a lawsuit if the parties cannot find a way to reach agreement, she explained. If there is a lawsuit, then a judge can order changes at the State Hospital and the whole matter can drag on for a decade or more. In an effort to cooperate, the next step is a three-day meeting with DOJ experts to establish what VSH will do. The Attorney General's Office is very interested in protecting Vermont and VSH from litigation and the dictates of a judge. Once DOJ receives DMH's response, then it is likely that reports with individual details will be released.

After further discussion among Standing Committee members about communications with DMH and their understanding of Paul's commitment, Beth asked the Standing Committee what input it would like to give Paul about proceeding with DOJ. Kitty Gallagher suggested emphasizing the work that VSH has already been doing to overcome shortcomings. George seconded Kitty's suggestion and added his own: looking at the work of the VSH Futures work group.

Clare asked how many new staff have been hired at VSH in the past year. Tom Simpatico said that he could not give an exact answer right now. Marty asked about physicians and nurses. Tom replied that VSH is currently recruiting for three physician positions and will hire them as soon as possible. He sees the winter holidays as the most probable dates for hiring. As far as nursing staff are concerned, they are holding fairly steady. Paul thinks that there are forty-one or forty-two positions in all (those numbers are estimates only).

Kitty asked about compassion training for staff. She said that she has heard lots of "static" about the lack of compassion staff have for patients. Tom said that one of the ways VSH tries to assure compassion is to try to make sure that staff understand the nature of mental illness and what is going on during psychotic episodes. They are given de-escalation training, and case conferences are also important. VSH has diversion training too, and is moving in the direction of lower utilization of seclusion and restraint. George mentioned a kind of professional development training that focuses on respect. It was developed by Richard Maffi.

Wendy asked again for input from the Standing Committee on the second half of the DOJ report, in which specific remedial measures are set forth. Clare said that it would be very important to focus on reducing seclusion and restraint. It is altogether possible for people to make improvements, Paul said. He mentioned Pennsylvania and New Jersey as examples. They have been working on changes for at least ten years.

Anne sees both improvements and huge steps backward at the State Hospital. She asked the Standing Committee what is needed in the way of oversight mechanisms for VSH. Anne does not think that reducing seclusion and restraint has been given high priority. There is not yet a strategic plan for such reduction. Anne saw other problems with new hospital policies that have recently been posted for comment. She sees contradictions between those policies and what DOJ wants to see happen at the State Hospital. Both of these issues, in Anne's view, boil down to the lack of an external oversight body for VSH. Fundamentally, Anne does not think that there will be real movement at VSH without the stick of DOJ filing an action in court. She thinks that negotiations with DOJ will end up costing more time and money and causing more damage to patients.

Anne asked Standing Committee members for their input into her responses to the new VSH policies. Frank Reed said that the State Hospital can receive input on the policies until the next meeting of the Policy Committee. That meeting will be on Friday, August 12.

Anne made a motion that the Standing Committee recommend sending the letter that she has written to DOJ urging DOJ to go to the second-level response, that is the formal route against the state of Vermont and seek a settlement through court rather than negotiating agreements on what to do at VSH. Jim Walsh asked Wendy to explain the available options again. They are three:

1. Negotiate agreement with DOJ on measures to show VSH's compliance
2. DOJ can file a complaint in court, with litigation pending
3. DOJ can file a complaint in court that results in full-blown litigation, with a judge determining what the consent decree will be and how it will be monitored

Marty seconded Anne's motion to send her letter. One member voted in favor of the motion, two members voted against it, and five members abstained. Members abstaining did not feel they had sufficient information to support the motion at this time. Anne encouraged ongoing e-mail communication for possible consensus later in the week.

The meeting adjourned at 2:15.